

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION**

PETER CANAVAN NEWBERRY,	:	
	:	
Plaintiff,	:	CASE NO:
	:	
v.	:	
	:	
MARC H. SILVERMAN, D.D.S., et al.,	:	
	:	
Defendants.	:	
	:	
	:	

NOTICE OF REMOVAL

Now come the Defendants, Marc H. Silverman, D.D.S. and Silverman Dental, LLC,¹ by and through their undersigned counsel and pursuant to 28 U.S.C. § 1446 and 28 U.S.C. § 1332, and hereby respectfully submit this Notice of Removal of Civil Action. In support of their Notice, Defendants state the following:

1.

On or around November 19, 2013, Plaintiff Peter Canavan Newberry (hereinafter "Plaintiff") filed a Complaint in the Campbell County Circuit Court, Campbell County, Kentucky, captioned Peter Canavan Newberry v. Marc H. Silverman, D.D.S., et al., Case No. 13-CI-1222. (A true and correct copy of the Complaint is attached hereto as Exhibit A). Plaintiff's Complaint alleges state law claims for dental malpractice, negligence, spoliation of evidence, intentional and/or negligent infliction of emotional distress, and fraud. A copy of the Summons and Complaint in this action was received by Defendants on November 20, 2013. (A true and

¹ The undersigned counsel enters a limited appearance on behalf of Defendants for the sole and exclusive purpose of moving to remove this matter to the United States District Court for the Eastern District of Kentucky. Defendants intend on filing a Motion to Dismiss the Complaint based upon lack of personal jurisdiction over these Defendants.

correct copy of the envelope via certified mail sent on November 19, 2013 evincing service and the Civil Summons is attached hereto as Exhibit B). Accordingly, Defendants' response to Plaintiff's Complaint is due to be filed on or before December 20, 2013.

2.

This Notice of Removal is filed within thirty (30) days of service of the Summons and Plaintiff's Complaint upon the Defendants and is therefore timely under 28 U.S.C. § 1446(b).

3.

The United States District Court Eastern District of Kentucky, Covington Division, has "diversity" jurisdiction over this case pursuant to 28 U.S.C. § 1332. Removal is proper under 28 U.S.C. § 1441(b) because:

- a) Plaintiff alleges that he is a citizen of the Commonwealth of Kentucky. (Pl. Complaint at ¶ 1).
- b) Defendant Marc H. Silverman is a resident of the State of Ohio who practices dentistry at 4464 Carver Woods, Cincinnati, Ohio 45242. (Pl. Complaint at ¶ 2.)
- c) Defendant Silverman Dental, LLC is an Ohio limited liability corporation with its principal place of business in Ohio. Its members consist of Marc H. Silverman, a resident of the State of Ohio, and Rick Silverman, a resident of the State of Ohio.
- d) Upon information and belief, the amount in controversy in this case exceeds seventy-five thousand dollars (\$75,000). Plaintiff is seeking compensatory damages, treble damages, punitive damages, interest, reimbursement of his costs and attorney's fees, and for all other just and proper relief entitled. (Pl. Complaint at WHEREFORE paragraphs.) Plaintiff placed no limitation on his prayer for relief. While the Complaint is silent as to the particular amount in controversy, it is apparent that the amount in controversy

exceeds the minimum jurisdictional amount. See Clark v. National Travelers Life Ins. Co., 518 F.2d 1167, 1168 (6th Cir. 1975) (holding that attorney fees award pursuant to state statute can be considered in determining whether requisite amount is met for diversity jurisdiction); Sorenson v. Ashmore, 4 F. Supp.2d 669, 670 (E.D. Tex. 1998) (holding that it was facially apparent from the prayer for relief in Plaintiff's complaint that the amount in controversy exceeded \$75,000 where the complaint merely sought an unspecified amount of attorneys' fees, actual damages, damages for emotional distress and punitive damages).

4.

As of the date of this filing, no other process, pleadings or orders have been filed with the Clermont County Circuit Court, and no motions are pending before that court.

5.

Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this case (attached hereto as Exhibit C), together with a copy of this Notice of Removal shall be filed with the Clerk of the Clermont County Circuit Court and served upon Plaintiff's counsel.

Respectfully submitted,

/s/ John M. Dunn

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Counsel for Defendants

CERTIFICATE OF SERVICE

This is to certify that on December 10, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Peter Canavan Newberry
1217 Criswell Road
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Pro Se Plaintiff

/s/ John M. Dunn

John M. Dunn